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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

GE.94-10664 (E)

Administration of justice and religious freedom in Viet Nam: the case of the monks in Hue

1. While the International Federation of Human Rights (IFHR) and its affiliate, the Vietnam Committee on Human Rights, support the economic reforms instituted by the Socialist Republic of Viet Nam, they are deeply concerned at the grave violations of civil and political rights which have resulted from the emphasis on economic development at the expense of fundamental rights. The inadequate protection of these rights has led to a widespread increase in corruption, abuse of power, exploitation and discrimination on social, political and religious grounds.

2. Although civil and political rights are guaranteed in the 1992 Constitution of the Socialist Republic of Viet Nam, they are denied in practice by too frequent resort to such practices as arbitrary and indefinite detention without trial, administrative detention, denial of rights on alleged grounds of national security, "probation pending investigation" (quan che dieu tra) of citizens, internal exile and house arrest without trial, and imprisonment as a result of unfair trials. The IFHR and the Vietnam Committee believe that the Socialist Republic of Viet Nam is implementing these practices with the sole aim of silencing human rights advocates and non-violent critics of the Government and the Communist Party of Viet Nam.

3. Of particular concern is the recent trial which resulted in the conviction of dignitaries and laypersons of the Unified Buddhist Church of Viet Nam (UBCV). On 15 November 1993, following a trial in first instance by the Provincial People's Court of Thua Thien-Hue province, Venerable Thich Tri Tuu (secular name Le Quang Vinh), Superior Monk at Linh Mu pagoda, and Venerable Thich Hai Tang (Nguyen Dinh Hoa), Superior Monk at Long An pagoda, were sentenced to four years' imprisonment, and Venerables Thich Hai Thinh (Le Phu Thinh) and Thich Hai Chanh (Nguyen Chon Tam) of Linh Mu pagoda to three years' imprisonment. Five Buddhist laypersons were also convicted, including Nguyen Van Minh, sentenced to four years' imprisonment and fined 226,347 million dong (approximately US$ 22,000) and Nguyen Hoang, Nguyen Khuong Hai Tri, Tran Xuan Quyen and Nguyen Van Vinh, who received sentences ranging from 6 to 24 months' imprisonment. The defendants, who had been detained in Quang Tri and Thua Phu prisons since June or July 1993, were arrested in connection with a demonstration by 40,000 Buddhists in Hue on 24 May 1993. They were charged under article 198.2 (a,b) of the Criminal Code relating to the crimes of "breaches of public order".

4. As the IFHR and the Vietnam Committee have previously informed the Sub-Commission (cf. E/CN.4/Sub.2/1993/NGO/14), it is probable that these monks and laymen were arrested not for any acts of violence or breaches of public order, but because they are prominent members of the UBCV. UBCV has been systematically persecuted by the Socialist Republic of Viet Nam since 1975 and in August 1993 the Government Board of Religious Affairs and the Quang Ngai authorities declared it an illegal organization, specifically forbidding the UBCV Patriarch, Venerable Thich Huyen Quang, to use the title of Head of the UBCV and ordering him to relinquish its official seal (Letter 248 CV/TGCP of 25 July 1993 from Board Chairman Vu Quang, and Decision 1110/UBQD). Since then Venerable Huyen Quang, who has been detained at Hoi Phuoc pagoda, Quang Ngai, under house arrest since 1982, has been kept in total isolation under

permanent police surveillance. The authorities have expelled his last disciples and assistants from the pagoda and he has been deprived of the right to travel or receive visitors. Despite his extremely poor health, he was denied the right to see a doctor on the ground that his residence permit was not valid.

5. The IFHR and the Vietnam Committee believe that the detention and conviction of the UBCV dignitaries and laypersons in Hue is inconsistent with the right to religious freedom guaranteed by article 18 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party, and with the minimum guarantees of due process of law required by article 14 of the Covenant.

6. Firstly, the defendants were convicted in advance by a sustained campaign of vilification in the State-controlled media. Although the Vietnamese Government has publicly denied that there was any such campaign, the IFHR and the Vietnam Committee have presented to the Commission two top-level documents, classified "Top Secret" and "Absolutely Secret", (cf. E/CN.4/1993/NGO/27), which reveal that there is a deliberate policy of religious repression against the UBCV. These documents call for special reprisals against Venerable Hai Tang and Venerable Tri Tuu. Between May and September 1993 official newspapers such as Cong An ("Security and Police Review"), Nhan Dan ("The People") and Quan Doi Nhan Dan ("People's Army") published over 100 articles calling for conviction of the monks. The pre-trial publication of accusations in the media undermined the right to a fair trial and violated the fundamental legal principle of presumption of innocence guaranteed under article 14.2 of the International Covenant and article 72 of the Socialist Republic's Constitution, according to which "No one may be considered guilty or convicted without a court judgement that has legal effect".

7. Furthermore, the defendants were denied access to legal counsel of their own choice, in violation of article 14.3 (b) of the Covenant, which entitles anyone accused of a criminal offence "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". Acting as legal representative of the defendants, the Unified Buddhist Church of Viet Nam appointed three French lawyers from the IFHR to defend the monks. However, the Vietnamese authorities made no response to visa applications filed by the IFHR at the Vietnamese Embassy in Paris on 22 July 1993, despite frequent reminders, nor did they reply to a further request from the IFHR President on 5 November 1993 that these lawyers should be allowed to assist the defendants at their trial.

8. Initial legal proceedings began in camera at the Provincial People's Court on 1 November 1993. The formal hearing was held on 15 November and lasted only one day.

9. The IFHR and the Vietnam Committee are particularly concerned at the following procedural deficiencies:

(a) The defendants were charged with civil law offences, yet the trial was held in military barracks at 28 Bui Thi Xuan Street, Hue. It is feared

that this choice of location may have prejudiced the outcome of the trial by undermining the independence of the proceedings;

(b) Proper notice of the trial was not given. Indeed, the IFHR and the Vietnam Committee are informed that the Vietnamese Government had deliberately misled foreign embassies as to the date of the trial in order to avoid the attendance of diplomatic observers. On 11 November 1993, Ms Ton Nu Thi Ninh, Director of the Foreign Ministry's Department of International Organizations, informed certain western embassies that the trial had been postponed. Considering that the Provincial People's Court is a court of first instance, directly subordinate to the central government it is inconceivable that the authorities in Hanoi were unaware that the hearing was already in progress;

(c) The trial was not open to the international press or public, contrary to statements issued by the Socialist Republic's Foreign Ministry and its Mission to the United Nations in New York, which declared that "thousands of people from Hue city followed the trial and expressed their approval of the decision made by the Court". Only people with special permits were granted admission to the Court. Accounts indicate that most of these people were "political cadres, Security agents in civilian clothing and retired people who were members of the Communist Party", whereas "even such close relatives as the fathers, mothers, brothers and sisters [of the defendants] were not issued permits to attend the trial nor even notified of its date".

(d) The defendants were not allowed access to their defence counsel during the trial, nor granted the right to defend themselves. During the hearings, Venerable Hai Tang publicly demanded the right to defend himself, but his request was overruled, in disregard of the Code of Criminal Procedure, article 12 of which states that "courts are duty-bound to guarantee that the accused or defendant can exert the right to conduct his own defence";

(e) The Court did not allow the defendants to speak freely, or to present the case in their own way. When they were allowed to speak, they were booed by Security agents, who jeered and shouted;

(f) Venerable Hai Binh from Linh Mu pagoda and other witnesses were subjected to intimidation and obliged to read out statements drafted by the Security Police.

10. These procedures are all inconsistent with the fundamental provisions of the Constitution of the Socialist Republic of Viet Nam and the Code of Criminal Procedure, which require public hearings (Code, article 14) and grant the right to defend oneself and to have defence counsel (Code, article 12 and Constitution, article 132), to choose one's own counsel (Code, article 37) and to be given adequate time to prepare one's defence (Code, article 36).

11./12. On 17 November 1993, an appeal against these sentences was lodged by Mrs. Nguyen Thi So and Mrs. Nguyen Thi Kha (the mothers of Venerable Tri Tuu and Venerable Hai Tang), Mrs. Nguyen Chon Vong and Mr. Le Quang Cam (close relatives of Venerable Hai Chanh and Venerable Hai Thinh) and four monks from Linh Mu pagoda. Another appeal was lodged on 24 November by Venerable Thich Huyen Quang, Patriarch of the UBCV. The appellants submit that the conviction was "arbitrary, non-objective and unjust, and incompatible with the spirit of

the law in force in the Socialist Republic of Viet Nam and they contest the charges of "breaches of public order". "Le Quang Vinh (Thich Tri Tuu) could not possibly have been implicated in the events of 24 May, because on that date he was in the hands of the authorities (...) As for the other defendants, they remained non-violent at all times, and took no active part in acts of incitement". Both appeals were sent to the Republic's President and Prime Minister, the President of the National Assembly (which is the Supreme Court of Appeal), the Chief Justices of the Supreme Court, the Court of Appeal, the Provincial People's Court of Hue and the local authorities.

13. As for the defendants themselves, the IFHR and the Vietnam Committee fear that they may have been prevented by the prison authorities from lodging an appeal. They have been detained incommunicado from the day of their arrest until now, and requests for visits and correspondence made by their parents and fellow monks have been systematically refused. Only Venerable Hai Tang, who was detained in Quang Tri prison before the trial, was allowed a visit from his mother, who was obliged to pay a "visitors tax" of 1,000 dong for the "upkeep of the prison".

14. The right of convicted persons to appeal is guaranteed by article 205 of the Code of Criminal Procedure and confirmed by article 207 which states that "the prison authorities must ensure the defendant's right to appeal". The detention of prisoners incommunicado is inconsistent with article 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and with the regulations relating to prisoners' rights adopted by the Socialist Republic's Council of Ministers.

15. The IFHR and the Vietnam Committee strongly denounce the detention of these monks and laypersons and call on the Socialist Republic of Viet Nam to release them immediately and unconditionally. At all events, their case should be reviewed by a court of appeal, in conformity with internationally accepted standards.

16. The IFHR and the Vietnam Committee call on the Commission to examine this question as a matter of high priority during its fiftieth session.